

The EPA is reconsidering its proposal for lowering the federal standard for arsenic in drinking water. The 5ppb standard, for which EPA is seeking comment, is scientifically unjustifiable. Many experts believe that "given the available information EPA has provided, a final standard below 20 ppb can not be justified." This rule is anticipated to cost \$1.5 billion annually and require \$14 billion in capital investments—threatening to bankrupt small towns. EPA's own analysis reveals will impose net costs on users of drinking water systems. Unfortunately, this regulation is just another example of the EPA putting the policy ahead of the science—at the cost of the American people.

Mr. President, I could go on and on about these midnight regulations.

The Clinton/Gore administration is circumventing regulatory rulemaking due process.

A fundamental safeguard provided by the Administrative Procedure Act (the "APA") is to ensure that federal agencies provide an opportunity for informed and meaningful public participation as part of the regulatory rulemaking process.

As if midnight regulations were not bad enough, the Clinton/Gore administration attempts to short-cut APA safeguards by the issuance of interim final rules, guidance documents, and policy statements. These documents, which do not go through the notice and comment rulemaking process required by the APA, are not subject to review by the courts. Often, these documents suggest that regulated entities must comply with requirements beyond the requirements found in law or regulation. Though agencies deny the fact these documents are legally binding, it is clearly an attempt to make law outside the rulemaking process—in a way which tries to shield agencies from judicial review.

For example, on April 14, 2000, the U.S. Court of Appeals, in *Appalachian Power v. EPA*, struck down EPA's "Periodic Monitoring" Guidance. Among its findings, the Court found: (1) EPA was creating broad new authority through the guidance document; (2) EPA did intend the guidance document to have binding effect; and (3) the guidance was illegally issued outside the APA rulemaking procedures.

From 1992 to 1999, the Clinton/Gore EPA published over sixty-five interim final rules, guidance, and policy statements in the Federal Register. However, there are many more of these documents, which have never been published in the Federal Register—in violation of the Federal Register Act.

And the cycle continues . . . on August 28, 2000, EPA has just issued a guidance document on Environmental Justice. While I will reserve the policy discussion on environmental justice for another time, the process question arises again. Even though the Congress and many stakeholders urged EPA to

issue an Environmental Justice Rule, which would be subject to the APA's opportunity for notice and comment as well as judicial review, the EPA refused to do so. Instead, the EPA again created a binding regulation, albeit through a guidance document, which is not subject to judicial review.

Additionally, in the case of many of the 88 rules, EPA will argue that the regulation has been a work in progress for years. EPA's claim begs the question, "Then why cram through the final product when EPA is juggling so many balls at once." Though some of the regulations may have been proposed before, it does not mean that the proposal is still relevant—which we see with EPA's Proposed New Source Review Rule. In this and other cases, EPA should re-propose the rule rather than going final with its obsolete, out-dated proposed rule.

In conclusion, the Clinton/Gore Administration is in overdrive to make policy by administrative edict where it has failed to do so by the legislative process or by following the regular regulatory order. President Clinton and Vice President GORE can't really believe that the less the public participates the better—but they're acting like they do. The fact that the EPA is cramming through scores of rules and other regulatory decisions without public discourse is irresponsible. I call on the Administration to exercise regulatory restraint and stop exceeding its legal authority without undergoing appropriate rulemaking procedures.

Rushed and poor judgement and deliberate acts that exceed an agency's authority can cause serious disruptions in the course of American families' lives. Therefore, I, along with other Members of Congress, will explore the various options, which Congress could use to address this Administration's numerous egregious political and anti-democratic actions. Environmental protection is vitally important, but so is the integrity of our government.

#### STATE DEPARTMENT MEMORANDUM

Mr. MCCAIN. Mr. President, yesterday, we learned that a memorandum from the Inter-Agency Coordinator for the State Department instructed the Voice of America to refrain from broadcasting an editorial denouncing the terrorist act that took the lives of seventeen American sailors on the U.S.S. *Cole* and expressing the United States' resolute opposition to all terrorism. Apparently she perceived in the editorial an insensitivity to the fact that "the seventeen or so dead does not compare to the 100+ Palestinians who have died in recent weeks where we have remained silent."

Mr. President, I was not aware that the United States had remained silent about the loss of life, both Israeli and Palestinian, in the current conflicts threatening the prospects for peace in the Middle East. Indeed, I believe the

President and a good many members of Congress have been quite outspoken on the subject. Moreover, the losses incurred in that conflict and our responsibility to do what we can to help bring violence there to an end, does not preclude the United States from strongly, unequivocally addressing the first responsibility of any U.S. Government: the safety of American lives.

I understand that the State Department spokesman has issued a statement calling the official's extraordinarily "offensive" memorandum "wrong," "not approved through appropriate channels" and assuring that it in "no way reflects the views of the Secretary or the Department." Fine, we can let the matter rest there.

Let me add a thought, though. It's a free country, but the official in question is not free to represent her own controversial priorities as official U.S. policy. Should she be unable to meet this basic professional and civic responsibility, perhaps she should seek a place of employment that is more compatible with her views.

#### TREASURY-POSTAL/LEGISLATIVE BRANCH APPROPRIATIONS—CONFERENCE REPORT

Mr. JOHNSON. Mr. President, last week, the Senate passed a conference report which contained the Treasury-Postal appropriations bill, the legislative branch appropriations bill, and a repeal of the century-old telephone excise tax. This package was the first of the several "mini-omnibus" packages we will likely consider in the waning days of this Congress, and unfortunately, it demonstrates the fundamental problems associated with this type of legislating.

I voted against this mini-omnibus for several reasons. The Senate never had the opportunity to even consider the Treasury-Postal bill on the floor. Many issues that are critical to Senators could not receive deliberation because of the unwillingness of the leaders to allow the Senate to fulfill its constitutional directive of deliberating on the crucial issues facing the nation. I will not review the entire list of neglected issues again. That recitation has occurred elsewhere, and I am confident we will hear more about them in the coming days.

Suffice it to say, I deplore the procedure that permits unpassed appropriations bills to go right to conference. Other than the procedural irregularity, I opposed this conference report because it did not contain language to strike the congressional pay raise. It is unfathomable to me that at a time we cannot raise the minimum wage to bring a full-time worker above the poverty line, we once again raise salaries for Members of Congress. I have opposed any effort to raise congressional salaries in every year since 1994. I, and similarly-minded colleagues, were denied the opportunity to fully debate this issue. I cannot support this increase, especially under the current